May 20, 2004

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Response to Notice of Proposed Rulemaking
Establishment of Organization Designation Authorization Procedures
69 Federal Register 2970 Vol. 69, No. 13
(January 21, 2004)

Docket Management System
U.S. Department of Transportation
400 Seventh Street, SW
Room Plaza Level 401
Washington, DC 20590-0001
Submitted Electronically to http://dms.dot.gov

Docket No. FAA-2003-16685

Dear Sir or Madam:

Expanding the FAA's delegated functions by establishing ODAs is both premature and reckless. Allowing the aviation industry to self-regulate in this manner is nothing more than the blatant outsourcing of inspector functions and handing over inherently governmental oversight activities to non-governmental, for-profit entities. As the exclusive representative of over 3,000 dedicated Federal Aviation Administration Flight Standards and MIDO Aviation Safety Inspectors (ASIs), PASS has vowed to fight against the FAA's creation of any system that allows industry to self regulate oversight via the honor system and where users can shop for approvals that should never be issued. The establishment of ODAs perpetrates just such a system and will actually compromise public air safety, not enhance it.

The FAA is conveniently ignoring the GAO study of their existing designee programs currently underway. Instead, within the NPRM, the FAA repeatedly characterizes the current designee programs as successful and claims there is support for expanding them. Yet, both the GAO report and the Booz-Allen Hamilton study the FAA cites as proof are almost a decade old. Since those

reports, there have been serious problems exposed in the designee programs. In May 2001, *Business and Commerce Aviation* described the FAA's inspection designee program as "spiraling out of control with more than 20,000 designees for FAA inspectors to oversee." Then, in 2003, a GAO report on aviation mechanics to the Transportation and Infrastructure Committee mentioned problems with designees who test and certificate mechanics. It caught the attention of Congressman DeFazio, the ranking Democrat on the House Aviation Subcommittee, who asked the GAO last year to further investigate just how well the FAA's designee programs are really working. This GAO study is currently underway and the results are expected sometime this summer. As recent as January 2003, problems with designees were publicized as part of the investigation findings of the tragic crash of Swissair Flight 111. Clearly, for the FAA to be pursuing this NPRM now, and making such overzealous proclamations about the "success" of the designee programs, defies all logic. At the very least, there should be a review of this NPRM again after the GAO study is completed.

Another irrational conclusion reached by the FAA is the assumption that ODAs will decrease the workload of the FAA's short-staffed inspector workforce because there will be less individual designees to oversee. In reality, establishing ODAs virtually guarantees the FAA inspector workload will **increase**, because there will be additional organizations to oversee along with all the individual designees. On page 2981, the FAA admits they have absolutely no way of predicting how many companies will apply for the ODA and they have no quantifiable data at all to determine how many certification and inspection hours it would be able to shift to other functions. Then, the rule does not eliminate individual designees (i.e. DERs, DARs, DMIRs, and DPEs, etc), but the crux of the FAA's argument is that it will have to spend less time on oversight of individual designees. Therefore, the FAA is obviously assuming these individual designees will relinquish their own designee status and go to work for ODAs en masse. Such naiveté on the FAA's part is astounding! As someone who is a DER has already pointed out in her comments on this NPRM, these individuals are not likely to give up their individual authorizations. The majority of the individual designees are unlikely to give up their self-employed status and go to work for an ODA. Furthermore, even the FAA acknowledges in the NPRM that the ODA structure and function clearly lends itself to companies hiring individuals as "consultants" on a project-by-project basis. So, the numbers of individual designees the FAA must monitor and supervise will not decrease much, if at all.

The rule also gives companies currently holding organizational designations the option of converting to ODAs or using individual designees. Therefore, even if not all current organizational designees convert to ODAs, any decrease will surely be offset by the number of new companies becoming ODAs or additional individual designees. Finally, it is a certainty there will be numerous companies, who cannot qualify under the current rules as organizational designees which will become ODAs under the new rule. Therefore, despite the FAA's claims of being

able to free up their own resources for “other safety related activities,” the reality will be that the already increasingly scarce FAA certification and inspection workforce will simply be responsible for overseeing even more designees, both individual and organizational.

Additionally, today’s designee programs are permeated with conflict of interest issues. Of course, the FAA wants to believe such conflicts can be overcome. For example, page 2973 states “… the structure must ensure the ODA Unit members have enough authority and independence to perform their delegated function without interference.” This concept is reiterated on page 2976, in that “…an organization would report to a level of management high enough to enable the ODA Unit to operate without pressure or influence from other organizational segments or individuals….” The theory is good, but will employees of any company ever really be up to biting the hand that signs their paychecks? One must only look to the ongoing current debate over “No Fear” policies for airline employees reporting problems. Even with whistleblower protections, there are far too many instances of FAA employees pressured to not report problems. Of course, the ValuJet crash remains the prime example in the aviation industry of how it is really impossible to merge dual mandates of air safety and economic viability within an organization. After the ValuJet crash, Congress saw fit to remove the FAA’s own dual mandate of promoting the aviation industry while regulating air safety. Further delegation as put forth in this rule serves to pass off the trust of the flying public to employees of an ODA Unit by expecting them to carry out the FAA’s mission of air safety while under the pressure of keeping their employer profitable and in business, even if the ODA Unit reports to the CEO directly.

Another example of how the economic concerns sometimes outweigh the air safety concerns in the current designee programs is the case of Saudi citizen, Hani Saleh Hanjour. Hanjour, the terrorist believed to have flown the hijacked airliner into the Pentagon, obtained three US Airman certificates without having ever been seen by an FAA inspector. Despite having what instructors later described as limited flying skills and an even more limited command of the English language, Hanjour did have the money to pay for his training and certifications.

This is a startling example of what can happen when the FAA inspector is too far removed from the certification process. MIDO Inspectors are already one layer removed from personally inspecting aircraft parts and quality systems. With ODAs, both MIDO and Flight Standards inspectors will be twice removed from those individuals actually performing the oversight activities. The FAA will not know who is actually doing the work for the ODA, but may not even know if the individuals are in the U. S. While the rule prohibits foreign ODAs, there is nothing that keeps the ODA Holder from having foreign ODA unit members

The FAA's cites one of the safety benefits to arise from this "improved" designation authorization system would be the self-audits an ODA would have to conduct periodically. One only has to refer to the comments on the NPRM made by International Aero Engineering AG to understand how the inherent conflict of interest factor certainly comes into play here. An ODA that is not following the rules will not be totally honest on a self-audit. Fear of punishment will make companies who do find discrepancies in their procedures hesitant to document the discrepancy or the corrective action. Again, the FAA is asking the flying public to trust, not the FAA, but employees of a company whose livelihood depends on the continuation of that company's business. This is not an improved designation authorization system by any stretch of imagination.

Sadly, the 9-11 Pentagon and Swissair investigations reveal several of the fatal flaws in the designee system which the members of PASS, Congress, GAO, and other concerned parties have been vocalizing for years. Originally, designee programs were intended to allow experienced industry personnel to assume some of the more repetitive types of certification activities, i.e. data collecting and testing. The FAA has abused and twisted the original concept into designees becoming a substitute for skilled FAA inspectors.

If the FAA would establish standards for all the existing individual and organizational designee process, which they must do as part of the transition to ODA, then they wouldn't need ODAs at all. Also, the real solution for not having the right knowledge and expertise in-house is for the FAA to increase the inspector workforce, as well as improve training for their inspectors as they were advised to do after the ValuJet crash. Unfortunately, rather than fix problems in current designee program, FAA is rushing to hand off their oversight responsibilities to industry and virtually establishing a "fox guarding the henhouse" mentality.